TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 1858

THE STATE OF [illegible] ex rel. BENJAIN R. COWEN,
PLAINTIFF IN ERROR,

vs.

[illegible]

ON WRIT OF ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

[illegible] & Sons

SUPREME COURT OF THE UNITED STATES.

No. 398.

THE STATE OF OHIO, EX REL, BENJAMIN R. COWEN, PLAINTIFF IN ERROR,

vs.

JAMES C. WETMORE.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Chief Justice and Justices of the Supreme Court of the District of Columbia, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between the State of Ohio, at the relation of Benjamin R. Cowen, petitioner, and James C. Wetmore, defendant, a manifest error hath happened, to the great damage of the said State of Ohio, as by its complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: Therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and prooeedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Honorable S. P. Chase, Chief Justice of the United States, this fifth day of November, in the year of our Lord 1867, and of the independence of the United States the 92d.

[L. S.] R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To James C. Wetmore:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the District of Columbia, wherein the State of Ohio, at the relation of Benjamin R. Cowen, is plaintiff, and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice may be done the parties in that behalf.

Witness, D. K. Cartter, Chief Justice of the said Supreme Court of the District of Columbia.

D. K. CARTTER,
Ch'f Justice.

Rec'd copy of the above notice, this 2d day of Jan, 1868.

A. G. RIDDLE,
for J. C. WETMORE.

2 To the Supreme Court of the District of Columbia:

Petition for Mandamus.

THE STATE OF OHIO, *ex. rel.* of BENJAMIN R. COWEN, *vs.* JAMES C. WETMORE.

The petition of Benjamin R. Cowen, the relator, humbly sheweth: that he is the adjutant general of the State of Ohio, that he is duly and legally authorized and empowered to perform all the functions and duties pertaining to said office. That on the 14th day of April, in the year eighteen hundred and sixty-three, the General Assembly of the State of Ohio passed an act, entitled "An act for the relief of discharged Ohio soldiers." That said act contained, among others, the following provisions: "That the governor, with the advice and consent of the senate, is hereby empowered to appoint such number of military claim agents as the good of the service may require, not exceeding six, under such regulations as he may prescribe, who shall hold their office for the term of one year, at the pleasure of the governor. It shall be the duty of said agents to investigate, give advice, and take such other action as will enable the
3 discharged Ohio soldier speedily to obtain, free of charge, the money due him from the general government for such services as he may have rendered his country, and to perform such other duties in behalf of the Ohio soldiers as the governor shall direct; said agents are hereby required to give bonds as shall be directed by the governor, and for the faithful performance of these duties shall receive the sum of twelve hundred dollars per annum, to be paid upon the certificate of the governor. That in pursuance of the power thus conferred upon the governor of the State of Ohio, he appointed James C. Wetmore, the defendant, a military claim agent, to reside at the city of Washington, and to discharge the duties provided for by said act, and such other duties in behalf of the Ohio soldiers, as the governor should direct. The said Wetmore accepted said appointment, and entered upon the discharge of the duties thereof.

That afterwards, to wit, on the 24th day of March, 1864, the General Assembly of the State of Ohio passed an act, entitled "An act to amend the act entitled 'an act for the relief of the discharged Ohio soldiers,' passed April 14th, 1863." That said last named amendatory act contained the following provisions, viz: That
4 the governor, with the advice and consent of the senate, is hereby empowered to appoint such number of military claim agents as the good of the service may require, not exceeding twelve, under such regulations as he may prescribe, who shall hold their offices for the term of one year, at the pleasure of the governor. The agents at Nashville, Chattanooga, Memphis and New Orleans, at a salary not exceeding fifteen hundred dollars per annum, and the other agents at a salary not exceeding twelve hundred dollars per annum. And that in pursuance of said last-named act, the governor

of the State of Ohio re-appointed the said James C. Wetmore a military claim agent, to reside at Washington City. The said James C. Wetmore accepted said re-appointment, and continued in the discharge of the duties of said office.

That afterwards, to wit, on the 6th day of April, 1865, the General Assembly of the State of Ohio passed an act entitled "An act for the relief of discharged Ohio soldiers and marines." That said last-named act contained the following provisions, viz:

"That the governor, with the advice and consent of the senate, is hereby empowered to appoint such number of military claim
5 agents as the good of the service may require, not exceeding twelve, under such regulations as he may prescribe, who shall hold their offices for the term of one year, at the pleasure of the governor, at a salary not exceeding eighteen hundred dollars per annum. Said agencies to be located at such places as the governor may direct, and the necessities of the service may require; the salary within the limits aforesaid to be fixed by the governor, having regard to the amount of business and expense of living at the locality of the agency. The governor shall certify the respective salaries so fixed by him to the auditor of State. It shall be the duty of the said agents to investigate, give advice, and take such other action as will enable the discharged Ohio soldiers and marines, speedily to obtain, free of charge, the money due them from the general government, for such services as they may have rendered their country, and to perform such other duties in behalf of the Ohio soldiers, as the governor shall direct.

"Said agents are hereby required to give bonds, as shall be
6 directed by the governor, for the faithful performance of their duties.

"That it shall be unlawful for any person not being authorized under the laws of this State, by advertisement, signs, or in any other manner, to represent himself to be a claim agent of the State of Ohio. Any person so offending shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not more than sixty days, or both, at the discretion of the court.

"That it shall be unlawful for any agent, under this act, to ask, demand, or receive any fee or compensation for any services under this act, other than is provided for by the law. Any person so offending shall be dismissed from office, and shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or both, at the discretion of the court.

"That the act entitled 'An act for the relief of discharged Ohio soldiers,' passed April 13th, 1863; also the act entitled 'An
7 act to amend the act, entitled 'An act for the relief of discharged Ohio soldiers,'' passed March 24, 1864, be, and the same are hereby repealed.

"This act shall have effect and be in force from and after its passage."

That in pursuance of said last-named act, the governor of Ohio appointed the said James C. Wetmore a military claim agent of said State, at the city of Washington, and the said Wetmore accepted said appointment, and entered upon and continued to discharge the duties thereof until the 30th day of June, 1867, when he resigned said office to the governor of said State of Ohio, and his said resignation was duly accepted by the governor.

The petitioner represents that prior to the enactment of any of the statutes above referred to, to wit, on the 24th day of December, 1862, the governor of the State of Ohio appointed the said James C. Wetmore an agent of the State of Ohio, to look after the interests of the Ohio soldiers in the city of Washington, and generally to render such services and discharge such duties as were subsequently defined by the acts hereinbefore referred to; and the said Wetmore
8 accepted said appointment and entered upon the discharge of the duties thereof, and continued so to act until he received his appointment under the act of April 14th, 1863.

Petitioner further represents, that from the time of the acceptance of his original appointment of the 26th of December, 1862, to the 30th day of June, 1867, the said James C. Wetmore continuously held and discharged the duties of military claim agent of the State of Ohio at the city of Washington, as said duties were defined by law and prescribed by the governor.

Petitioner further represents, that during the whole of said time the said Wetmore has been paid by the State of Ohio, either an annual salary or monthly wages for said services.

That the State has from the beginning furnished to said agent an office in the city of Washington, and paid the rent therefor; that the State has furnished and paid for the necessary clerical force employed in said office, and has furnished and paid for all the stationery, books, fuel, gas, and whatever else was necessary or proper for the use of said office.

9 That the said Wetmore has regularly, during the whole of his term, rendered his accounts for his own salary or wages, clerk's hire, and office expenses to the proper department of the State government, and said accounts have been regularly and duly paid out of the treasury of said State; that prior to his resignation upon the 30th day of June, 1867, the said Wetmore always, in the transaction of the business pertaining to the office aforesaid, recognized the State of Ohio as his principal, and himself the agent thereof.

Petitioner further represents, that in carrying on the business of said office, voluminous records have been made, and numerous files of papers, consisting of discharges of soldiers and marines, or copies thereof, letters, affidavits, powers of attorney, accounts against the various departments of the federal government for bounty, pay and back pay of Ohio soldiers and marines, and for commissary and quartermaster's stores, and such papers and documents as are necessary to the prosecution of said claims, &c.

Petitioner is unable to specifically enumerate or designate what the records and papers pertaining to said office contain, never
10 having been permit.ed to examine the same.

Petitioner further represents, that the General Assembly of the State of Ohio, on the 15th day of April, 1867, passed an act entitled "An act to abolish the bureau of soldiers' claims and the office of military claim agents," which said act contains the following provisions, viz: "That the act entitled 'An act to create a bureau for the auditing and collection of soldiers' claims and for the relief of Ohio soldiers,' passed Feb. 17, 1865, together with an act amendatory thereto, passed March 31st, 1865; also, an act entitled 'An act for the relief of discharged Ohio soldiers and marines,' passed April 6th, 1865, be, and the same are hereby repealed, to take effect on and after the 1st day of October, 1867. On the passage of this act the business of the offices established under the foregoing act, shall be closed, as follows: The commissioner of claims at Columbus, the military claim agent at Washington, shall continue to receive, file, and prosecute to collection such claims as may be presented to them, until the 1st day of June, 1867; all applications thereafter for settlement of claims shall be returned immediately to applicants, with notice that the respective offices are to be discontinued, and
11 that no further claims will be received for prosecution on and after said first day of June, 1867. They shall proceed to settle up the business of their offerices [offices] and adjust the claims of Ohio soldiers, and the heirs of deceased soldiers remaining in their hands, as rapidly as possible, consistent with needed care and safety; and on the first day of October, 1867, the offices of the said commissioner of claims and military claim agent shall be discontinued, and all papers in said offices relating to the unfinished business thereof, shall be by them sent to the office of the adjutant general of the State of Ohio for final adjustment and settlement. The adjutant general shall prosecute all claims, thus sent to his office, to settlement, but shall receive no new applications for settlement of claims, as provided in the act hereby repealed. The salaries now paid to the commissioner of soldiers claims, and to the military claim agent at Washington, as fixed by law or otherwise, shall be continued to them respectively until the time fixed above for the discontinuance of their offices; and the paymaster's checks and auditor's certificates which may be in the office of the commissioner of soldiers' claims on said October 1st, 1867, together with such other checks and certificates of like character as may accumulate in the hands of the adjutant general, and shall be unclaimed by parties entitled thereto, shall
12 be delivered to the treasurer of the State, and an inventory of the same shall be given to the auditor of State, and the same shall be held by the treasurer until claimed by parties entitled thereto, or otherwise disposed of by law. The commissioner of soldiers' claims and military claim agents shall each reduce their clerical force and expenditures, in their respective offices, as rapidly as the efficient discharge of duty therein will admit; that the commissioner of soldiers' claims is hereby directed, immediately upon the passage of the act, to cause notice to be inserted twice in two daily papers in each of the cities of Cincinnati, Columbus, and Cleveland, to the effect that the collection of soldiers' claims, through the offices herein mentioned, has

been by law directed to be discontinued on the first day of June, 1867; and also to cause circulars containing same notice to be sent to the various post-offices in this State, the expense of such advertisement to be paid out of any money appropriated to the payment of clerks in the bureau of soldiers' claims. That this act shall take effect and be in force from and after its passage, except as provided in section one of this act."

Petitioner represents, that said offices of military claim agent at Washington having become vacant by the resignation of the
13 said Wetmore, under the law of April 15th, 1867, (unless said vacancy be filled by appointment of the governor,) he is authorized, and it is made his duty to take possession of the books, property, and papers of said office; and in addition to the duty devolved upon him by law, on the 10th day of July, 1867, he received from the governor of the State of Ohio an order to take possession of the books, papers, moneys, treasury certificates, and all other effects of the Ohio military agency at Washington, which order is in the words and figures following, to wit:

"STATE OF OHIO, EXECUTIVE DEPARTMENT,
"COLUMBUS, 10 *July*, 1867.

"GENERAL: I feel it necessary to direct that you proceed to Washington with as little delay as may be, and take possession of the books, papers, moneys, and treasury certificates, and all other effects of the Ohio military agency there, and cause the same to be transported to the State capital, where you will please conduct the business of the agency, in addition to your present duties as adjutant general. This step is made necessary by the information that James C. Wetmore, late State agent, has abandoned the duties of that position, leaving the official property of the State in the hands of a gentleman who is a stranger to this department. You will please exert the greatest diligence and care in seeing that you get into your pos-
session all the books, records, evidences of claims, and other
14 property of the agency, so that you may be able to prosecute the soldiers' claims as promptly and efficiently as could have been done at the agency. You will also communicate in person with the Secretary of the Treasury, and the officers of his and other departments through which the business is performed, and secure their co-operation in your efforts to prevent the change in the conduct of the agency operating to the delay or prejudice of the claims of Ohio soldiers. If upon examination you have reason to believe that Mr. Wetmore has obtained powers of attorney to control claims heretofore entrusted to the State, you will please protest, in the name of the State government, to the proper federal officers, against his being allowed to receive or prosecute the same, until satisfactory evidence is received that the claimants have made such transfer with full knowledge of their rights in the premises. As soon as the same can be done, you will issue a circular to every claimant whose claim was in the hands of the Washington agency prior to June 1st, and uncollected, fully setting forth the right of such claimant to have his claim

prosecuted to final collection by the State, and the manner in which it is to be done. In every other manner which your examination of the business of the agency may suggest, you will please use your best efforts to make the claimants understand that their interests will be fully, promptly, and efficiently prosecuted and protected. You will also be authorized to examine the accounts of Mr. Wetmore and of his office, and balances due his clerks, and other proper items of indebtedness to third persons will be paid upon your voucher as acting agent, in the same manner that such accounts have been heretofore paid. You will please procure, if possible, a copy of the contract for rent of the premises lately occupied by the agency, and report fully the whole arrangement in regard thereto, so far as the same can be ascertained. Up to 1st October such clerical force as may be strictly necessary to conduct the unfinished business of the agency you will employ, making vouchers for the same, and the other necessary expenses of such business in the name of the agency.

"Very respectfully, your obedient servant,

"J. D. COX, *Governor.*

"To Brig. Gen. B. R. COWAN, *Adj't Gen. of Ohio.*"

Petitioner further represents, that the books and papers aforesaid, pertaining to said office are in the possession of the said James C. Wetmore, and that petitioner, on the 16th day of July, 1867, called upon the said Wetmore, at the office of said agency in the city of Washington, and demanded the possession of said books and papers, &c., but the said Wetmore refused to deliver the same to petitioner, and claimed that they were his individual, private, property; and the said Wetmore still refuses to deliver over to petitioner the said books and papers; and that he applied to your honorable court, sitting as a Court of Equity, for an order of injunction restraining petitioner and the State of Ohio from taking possession thereof by process of law, which said application was refused by the court.

Petitioner further represents, that it was the object of the State of Ohio, in the creation and maintenance of said agency, to obtain for her soldiers and marines, the money due them from the general government for such services as they may have rendered their country, free of charge to them, and at the expense of the whole people of the State. And the law of April 15th, 1867, was intended to carry out the undertakings of the State, with her soldiers and marines, by making it the duty of your petitioner to take possession of the books and papers of said office, and complete the unfinished business of said agency, after the said agency should itself expire by law.

Your petitioner further represents, that unless he can obtain possession of said books and papers, it will be impossible for him to discharge the duties and carry out the intentions of the law of April 15th, 1867.

Petitioner further represents, that he is informed, and believes, that the said Wetmore has been, and is endeavoring to have himself employed as an individual claim agent, to collect for soldiers and

others, the uncollected claims remaining in said Ohio agency. That on the 30th day of May, 1867, he issued from said agency a circular letter, and caused the same to be sent to persons having unfinished business in said agency, which said circular is in the words and figures following, to wit:

"OHIO STATE MILITARY AGENCY,
"WASHINGTON, *May* 30, 1867.

"By an act of the legislature of Ohio, this agencywill be discontinued from receiving claims from June 1st, 1867; your claims for additional bounty, under act of July 28th, 1866, having been filed by me in the proper department. Should you desire me, after my connection with this agency shall have ceased, to attend personally to your claim, you will please sign the enclosed power of attorney, and return the same to me at your earliest convenience. My charge will be five per cent. on amount collected. My experience as Ohio State Military Agent in this city for the past five years, gives me
18 superior facilities for adjusting all classes of claims against the general government.

"Respectfully,

"JAMES C. WETMORE."

Petitioner further represents, that said letter being generally distributed among the soldiers, whose claims were in the charge of the Washington agency, and were unfinished, caused great dissatisfaction and complaint among them, on account of the inference from said circular, that the State did not propose to finish the business, yet undisposed of, and the apprehension that the parties would be compelled to employ private agents to do what the State had undertaken to do for them.

Your petitioner further represents, that he is entirely without adequate remedy, unless it is afforded by the interposition of your honorable court, and he therefore prays that the writ of mandamus may issue against the said James C. Wetmore, commanding him to deliver over to the relator all the books and papers pertaining to and belonging to said Ohio Military Claim Agency office in the city of Washington, and that such other order may be made in the premises, as justice may require.

B. R. COWAN,
FORD & HENKLE,
Att'ys for Relator.

19 DISTRICT OF COLUMBIA, *County of Washington, ss*:

Benjamin R. Cowen, relator in the foregoing petition, being duly sworn, says that the facts therein stated as of his own knowledge are true, and those facts stated upon information he believes to be true.

R. J. MEIGS, *Clerk.*

Order for rule to show cause, filed 29 *July*, '67.

Let rule to show cause be issued in this case, returnable before the justice holding the special term, on Thursday next, the 1st of August, at 10 o'clock a. m.

BY ORDER OF THE COURT.

July 29th, 1867.

In the Supreme Court of the District of Columbia, July 29, 1867.

THE STATE OF OHIO, on the relation of BENjamin R. Cowen, petitioner, *vs.* JAMES C. WETMORE, respondent. } At law. No. 4,034.

On reading and filing the relator's petition, verified by his affidavit, it is ordered by the court, that James C. Wetmore, late military claim agent of the State of Ohio, appear before this court on
20 Thursday next, the first day of August, 1867, at ten o'clock a. m., to show cause why a mandamus should not be issued, commanding him to deliver to the said relator, Benjamin R. Cowen, all the books and papers pertaining and belonging to the Ohio Military Claim Agency office, in the city of Washington, on the said petition particularly set forth and described.

A true copy.

Test: R. J. MEIGS, *Clerk.*

Marshal's Return.

"Served copy of the within on def't.

"D. S. GOODING, *Marshal.*

"July 30th, 1867."

The rule, heretofore granted on the 29th ult., having been argued by counsel on both sides, on the petition in this case, and duly considered, it is thereupon, this 6th day of August, 1867, ordered, that an alternative mandamus issue hereupon, returnable the first Tuesday of September next.

BY ORDER OF THE COURT.

21 THE UNITED STATES, *District of Columbia, ss*:

To James C. Wetmore, greeting: Whereas, it has been suggested to us that you have refused to surrender and deliver over to Benjamin R. Cowen, Adjutant General of Ohio, and Acting Military agent, the books and papers in your possession belonging and pertaining to the office of the Ohio Military Agency, located in Washington, District of Columbia, that said Benjamin R. Cowen is duly authorized as Adjutant General and Military Agent of the State of Ohio, to perform and discharge all the functions and duties pertaining to said office. That on the 14th day of April, in the year eighteen hundred and sixty-

others, the uncollected claims remaihing in said Ohio agency. That on the 30th day of May, 1867, he issued from said agency a circular letter, and caused the same to be sent to persons having unfinished business in said agency, which said circular is in the words and figures following, to wit:

"OHIO STATE MILITARY AGENCY,
"WASHINGTON, *May* 30, 1867.

"By an act of the legislature of Ohio, this agencywill be discontinued from receiving claims from June 1st, 1867; your claims for additional bounty, under act of July 28th, 1866, having been filed by me in the proper department. Should you desire me, after my connection with this agency shall have ceased, to attend personally to your claim, you will please sign the enclosed power of attorney, and return the same to me at your earliest convenience. My charge will be five per cent. on amount collected. My experience as Ohio State Military Agent in this city for the past five years, gives me
18 superior facilities for adjusting all classes of claims against the general government.

"Respectfully,

"JAMES C. WETMORE."

Petitioner further represents, that said letter being generally distributed among the soldiers, whose claims were in the charge of the Washington agency, and were unfinished, caused great dissatisfaction and complaint among them, on account of the inference from said circular, that the State did not propose to finish the business, yet undisposed of, and the apprehension that the parties would be compelled to employ private agents to do what the State had undertaken to do for them.

Your petitioner further represents, that he is entirely without adequate remedy, unless it is afforded by the interposition of your honorable court, and he therefore prays that the writ of mandamus may issue against the said James C. Wetmore, commanding him to deliver over to the relator all the books and papers pertaining to and belonging to said Ohio Military Claim Agency office in the city of Washington, and that such other order may be made in the premises, as justice may require.

B. R. COWAN,
FORD & HENKLE,
Att'ys for Relator.

19 DISTRICT OF COLUMBIA, *County of Washington, ss*:

Benjamin R. Cowen, relator in the foregoing petition, being duly sworn, says that the facts therein stated as of his own knowledge are true, and those facts stated upon information he believes to be true.

R. J. MEIGS, *Clerk.*

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20 Thursday next, the first day of August, 1867, at ten o'clock a. m., to show cause why a mandamus should not be issued, commanding him to deliver to the said relator, Benjamin R. Cowen, all the books and papers pertaining and belonging to the Ohio Military Claim Agency office, in the city of Washington, on the said petition particularly set forth and described.

A true copy.

Test: R. J. MEIGS, *Clerk.*

Marshal's Return.

"Served copy of the within on def't.

"D. S. GOODING, *Marshal.*

"July 30th, 1867."

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BY ORDER OF THE COURT.

21 THE UNITED STATES, *District of Columbia, ss*:

To James C. Wetmore, greeting: Whereas, it has been suggested to us that you have refused to surrender and deliver over to Benjamin R. Cowen, Adjutant General of Ohio, and Acting Military agent, the books and papers in your possession belonging and pertaining to the office of the Ohio Military Agency, located in Washington, District of Columbia, that said Benjamin R. Cowen is duly authorized as Adjutant General and Military Agent of the State of Ohio, to perform and discharge all the functions and duties pertaining to said office. That on the 14th day of April, in the year eighteen hundred and sixty-

three, the General Assembly of the State of Ohio passed an act entitled "an act for the relief of the discharged Ohio soldiers." That said act contained among others the following provisions: "That the governor, with the advice and consent of the senate, is hereby empowered to appoint such number of military claim agents as the good of the service may require, not exceeding six, under such regulations as he may prescribe, who shall hold their offices for the term of one year, at the pleasure of the governor." "It shall be the duty of said agents to investigate, give advice and take such
22 other action as will enable the discharged Ohio soldiers speedily to obtain, free of charge, the money due them from the general government for such services as they may have rendered their country, and to perform such other duties in behalf of the Ohio soldiers as the governor shall direct. Said agents are hereby required to give bonds, as shall be directed by the governor, and for the faithful performance of these duties shall receive the sum of twelve hundred dollars per annum, to be paid upon the certificate of the governor." That in pursuance of the power thus conferred upon the governor of the State of Ohio, he appointed James C. Wetmore, the defendant, a military claim agent to reside at the city of Washington, and to discharge the duties provided for by said act, and such other duties in behalf of the Ohio soldiers as the governor should direct. The said Wetmore accepted said appointment and entered upon the discharge of the duties thereof. That afterwards, to wit, on the 24th day of March, 1864, the general assembly of the State of Ohio passed an act entitled to amend an act entitled "An act for the relief of Ohio soldiers passed April 14th, 1864. That said last named amendatory act contained the following provisions, viz: That the governor, with the advice and consent of the senate, is hereby empowered to
23 appoint such number of military claim agents as the good of the service may require, not exceeding twelve, under such regulations as he may prescribe, who shall hold their offices for the term of one year, at the pleasure of the governor. The agents at Nashville, Chattanooga, Memphis, and New Orleans, at a salary not exceeding fifteen hundred dollars per annum, and the other agents not to exceed twelve hundred dollars per annum." And in pursuance of said last-named act the governor of the State of Ohio re-appointed the said James C. Wetmore, a military claim agent of said State, to reside at Washington City. The said James C. Wetmore accepted said re-appointment and continued in the discharge of the duties of said office.

That afterwards to wit: on the 6th day of April, 1865, the General Assembly of the State of Ohio passed an act entitled "An act for the relief of discharged Ohio soldiers and marines." That said last-named act contained the following provisions, viz: "That the governor, with the advice and consent of the senate, is hereby empowered to appoint such number of military claim agents as the good of the service may require, not exceeding twelve, under such regulations as he may prescribe, who shall hold their offices for the term of one year, at the pleasure of the governor, at a salary

24 not exceeding eighteen hundred dollars per annum; said agencies to be located at such places as the governor may direct and the necessities of the service may require; the salary within the limit aforesaid to be fixed by the governor, having regard to the amount of business and expense of living at the locality of the agency. The governor shall certify the respective salaries so fixed by him to the auditor of the State. It shall be the duty of said agents to investigate, give advice, and take such other action as will enable the discharged Ohio soldiers and marines speedily to obtain, free of charge, the money due them from the general government for such services as they may have rendered their country, and to perform such other duties in behalf of Ohio soldiers and marines as the governor shall direct. Said agents are hereby required to give bonds as shall be directed by the governor for the faithful performance of their duties.

"That it shall be unlawful for any person not being authorized by the laws of this State, by advertisement, signs, or any other manner, to represent himself to be a claim agent of the State of Ohio; any person so offending, shall, upon conviction thereof, be fined in any sum not exceeding five hundred dollars, or imprisonment in the county jail not more than sixty days, or both, at the discretion of the court.

25 "That it shall be unlawful for any agent, under this act, to ask, demand, or receive any fee or compensation for any services under this act, other than is provided for by law; any person so offending shall be dismissed from office, and shall, upon conviction thereof, be fined in any sum not exceediug five hundred dollars, or imprisoned in the county jail not exceeding six months, or both, at the discretion of the court. That the act entitled "An act for the relief of discharged Ohio soldiers," passed [passed] April 14th, 1863, also the act entitled "An act to amend the act entitled 'An act for the relief of discharged Ohio soldiers,'" passed March 24th, 1863, be, and the same are hereby repealed. This act shall take effect and be in force from and after its passage."

That in pursuance of said last named act, the governor of Ohio appointed the said James C. Wetmore, a military claim agent of said State at the city of Washington, and the said Wetmore accepted said appointment, and entered upon, and continued to discharge the duties thereof, until the 30th day of June, 1867, when he resigned said office to the governor of said State of Ohio, and his said resignation was duly accepted by the governor.

That prior to the enactment of any of the statutes above
26 referred to, to wit: On the 26th day of December, 1862, the governor of the State of Ohio appointed the said James C. Wetmore an agent of the State of Ohio to look after the interests of the Ohio soldiers in the city of Washington, and generally to render such services and discharge such duties as were subsequently defined by the acts hereinbefore referred to, and the said Wetmore accepted said appointment, and entered upon the discharge of the duties thereof, and continued so to act until he received his appointment under the act of April 14th, 1863.

That from the time of the acceptance of his original appointment of the 26th of December, 1862, to the 30th day of June, 1867, the said James C. Wetmore continuously held and discharged the duties of military claim agent of the State of Ohio at the city of Washington as said duties were defined by law, and prescribed by the governor.

That during the whole of said time the said Wetmore has been paid by the State of Ohio with an annual salary or monthly wages for said services.

That the State has, from the beginning, furnished to said agent an office in the city of Washington, and paid the rent therefor;
27 that the State has furnished and paid for the necessary clerical force employed in said office, and has furnished and paid for all the stationery, books, fuel, gas, and whatever else was necessary or proper, for the use of said office.

That the said Wetmore has regularly, during the whole of his term, rendered his accounts for his own salary or wages, clerk hire, and office expenses, to the proper department of the State government, and said accounts have been regularly and duly paid out of the treasury of said State.

That prior to his resignation on the 30th day of June, 1867, the said Wetmore, always in the transaction of the business pertaining to the office aforesaid, recognised the State of Ohio his principal and himself the agent thereof.

That in carrying on the business of said office voluminous records have been made, and numerous files of papers, consisting of discharges of soldiers and marines, or copies thereof, letters, affidavits, powers of attorney, accounts against the various departments of the federal government, for bounty, pay, and back pay, of Ohio
28 soldiers and marines, and for commissary, quartermaster's stores, and such papers and documents as are necessary to the prosecution of said claims, &c.

That it is impossible to more specifically enumerate or designate the records and papers pertaining to said office.

That the General Assembly of the State of Ohio, on the 15th day of April, 1867, passed an act entitled "an act to abolish the bureau of soldiers' claims, and the office of military claim agents', which said act contains the following provisions, viz: That the act entitled "An act to create a bureau for the auditing and collecting of soldiers' claims, and for the relief of Ohio soldiers," passed February 17th, 1865, together with an act amendatory thereto, passed March 31st, 1865, also an act entitled "An act for the relief of the discharged Ohio soldiers and marines," passed April 6th, 1865, be and the same are hereby repealed; to take effect on and after the first day of October, 1867. On the passage of this act the business of the offices established under the foregoing acts shall be closed as follows: The commissioner of claims at Columbus and the military
29 claim agent at Washington shall continue to receive, file, and prosecute, to the collection such claims as may be presented to them until the 1st day of June, 1867; all applications thereafter

for settlement of claims shall be returned immediately to applicants with notice that the respective offices are to be discontinued, and that no further claims will be received for prosecution on and after said first day of June, 1867; they shall proceed to settle up the business of their offerices [offices] and adjust the claims of Ohio soldiers, and the heirs of deceased soldiers remaining in their hands, as rapidly as possible, consistent with needed care and safety; and on the first day of October, 1867, the offices of the said commissioner of claims and military claim agent shall be discontinued, and all papers in said offices relating to the unfinished business thereof, shall be by them sent to the office of the adjutant general of the State of Ohio for final adjustment and settlement; the adjutant general shall prosecute all claims thus sent to his office, to settlement, but shall receive no new applications for settlement of claims as provided in the act hereby repealed; the salaries now paid to the commissioner of soldiers'
30 claims, and to the military claim agent at Washington, as fixed by law or otherwise, shall be continued to them, respectively, until the time fixed above for the discontinuance of their offices, and the paymasters' checks and auditors' certificates, which may be in the office of the commissioner of soldiers claims on said October 1st, 1867, together with such other checks and certificates of like character as may accummulate in the hands of the adjutant general and shall be unclaimed by parties entitled thereto, shall be delivered to the treasurer of State, and an inventory of the same shall be given to the auditor of the State, and the same shall be held by the treasurer until claimed by the parties entitled thereto, or otherwise disposed of by law; the commissioner of soldiers' claims and military claim agents shall each reduce their clerical force and expenditures in their respective offices as rapidly as the efficient discharge of duty therein will admit; that the commissioner of soldiers' claims is hereby directed, immediately upon the passage of this act, to cause notice to be inserted twice in two daily papers in each of the cities of Cincinnati, Columbus, and Cleveland, to the effect that the collection
31 of soldiers' claims through the offices herein mentioned has been by law directed to be discontinued on the first day of June, 1867; and also to cause circulars containing same notice to be sent to the various post-offices in this State, the expenses of such advertisement to be paid out of any money appropriated to the payment of clerks in the bureau of soldiers' claims; that this act shall take effect and be in force from and after its passage, except as provided in section one of this act.

That said office having become vacant by the resignation of the said Wetmore, under the law of April 15th, 1867, unless said vacancy be filled by appointment of the governor, the said Cowen, as adjutant general of Ohio, is authorized and it is made his duty to take possession of the books, property and papers of said office, and in addition to the duty devolved upon him by law, on the 10th day of July, 1867, he received from the governor of the State of Ohio, an order to take possession of the books, papers, moneys, treasury certificates and all other effects of the Ohio military agency at Washington, which order is in the words and figures following, to wit:

"STATE OF OHIO, EXECUTIVE DEPARTMENT,
"COLUMBUS, 10 *July*, 1867.

"GENERAL: I feel it necessary to direct that you proceed
32 to Washington, with as little delay as may be and take possession of the books, papers, moneys and treasury certificates, and all other effects of the Ohio Military Agency there, and cause the same to be transported to the State capitol, where you will please conduct the business of that agency in addition to your present duties as adjutant general. This step is made necessary by the information that James C. Wetmore, late State agent, has abandoned the duties of that position, leaving the official property of the State in the hands of a gentleman who is a stranger to this department. You will please exert the greatest diligence and care in seeing that you get into your possession all the books, records, evidences of claims and other property of the agency, so that you may be able to prosecute the soldiers' claims, as promptly and efficiently as could have been done at the agency. You will also communicate in person with the Secretary of the Treasury, and the officers of his and other departments, through which the business is performed, and secure their co-operation in your efforts to prevent the change in the conduct of the agency operating to the delay or prejudice of the claims of Ohio soldiers. If upon examination you have reason to believe that Mr. Wetmore
33 has obtained powers of attorney to control claims heretofore entrusted to the State, you will please protest in the name of the State government to the proper federal officers against his being allowed to receive or prosecute the same, until satisfactory evidence has been received that the claimants have made such transfer with full knowledge of their rights in the premises. As soon as the same can be done you will issue a circular to every claimant whose claim was in the hands of the Washington agency prior to June 1st, and uncollected, fully setting forth the right of such claimant to have his claim prosecuted to final collection by the State, and the manner in which it is to be done. In every other manner which your examination of the business of the agency may suggest, you will please use your best efforts to make the claimants understand their interests will be fully, promptly and efficiently prosecuted and protected. You will also be authorized to examine the accounts of Mr. Wetmore, and of his office, and balances due his clerks; and other proper items of indebtedness to third persons will be paid upon your vouchers as acting agent, in the same manner as such accounts have been here-
34 tofore paid. You will please procure, if possible, a copy of the contract for rent of the premises lately occupied by the agency, and report fully the whole arrangement in regard thereto, so far as the same can be ascertained; up to the 1st of October such clerical force as may be strictly necessary to conduct the unfinished business of the agency you will employ, making vouchers for the same and the other necessary expenses of such business, in the name of the agency.

"Very respectfully, your obedient servant,
"J. D. COX, *Governor.*

"To Brig. Gen. B. R. COWEN, *Adj. Gen'l of Ohio.*"

That the books and papers, aforesaid, pertaining to said office, are in the possession of the said James C. Wetmore, and that the said Benj. R. Cowen, on the 16th day of July, 1867, called upon the said Wetmore, at the office of the said agency in the city of Washington, and demanded possession of said books, papers, &c., and exhibited his authority so to do, but the said Wetmore refused to deliver the same to said Cowen, and claimed that they were his individual private property; and the said Wetmore still refuses to deliver over to the said Cowen, the said books and papers; and that the said
35 Wetmore applied to this court, setting as a Court of Equity, for an order of injunction restraining the said Benj. R. Cowen, and the State of Ohio, from taking possession thereof, by process of law, which said application was refused by this court.

That it was the object of the State of Ohio in the creation and maintenance of said agency to obtain for the soldiers and marines the money due them from the general government for such services as they may have rendered their country, free of charge to them, and at the expense of the whole people of the State. That the law of April 15th, 1867, was intended to carry out the undertaking of the State with her soldiers and marines, by making it the duty of the said Benj. R. Cowen, to take possession of the books and papers of said office, and complete the unfinished business of said agency, after the said agency should itself expire by law.

That unless the said Benj. R. Cowen, can obtain possession of said books and papers it will be impossible for him to discharge the duties and carry out the intentions of the law of April 15, 1867.

That the said Wetmore has been and is endeavoring to have
36 himself employed as an individual claim agent, to collect for soldiers and others, the uncollected claims remaining in said Ohio agency; that on the 30th day of May, 1867, the said Wetmore issued from said agency a circular letter, and caused the same to be sent to persons having unfinished business in said agency, which said circular is in the words and figures following, to wit:

"OHIO STATE MILITARY AGENCY,
"WASHINGTON, *May* 30, 1867.

"By an act of the legislature of Ohio, this agency will be discontinued from receiving claims from June 1st, 1867. Your claim for additional bounty under act of July 28, 1866, having been filed by me in the proper department, should you desire me, after my connection with this agency shall have ceased, to attend personally to your claim you will please sign the enclosed power of attorney and return the same to me, at your earliest convenience. My charge will be five per cent. on amount collected. My experience as Ohio State Military Agent, in this city, for the past five years, gives me superior facilities for adjusting all classes of claims against the general government.

"Respectfully,
"JAMES C. WETMORE."

37 That said letter being generally distributed among the soldiers whose claims were in the charge of the Washington agency, and were unfinished, caused great dissatisfaction and complaint among them, on account of the inference from said circular that the State did not propose to finish the business yet undisposed of, and the apprehension that the parties would be compelled to employ private agents to do what the State of Ohio had undertaken to do for them.

Now, therefore, we being willing that full and speedy justice should be done in the premises, do command you, that immediately upon receipt of this writ you deliver over to the said Benjamin R. Cowen all the books and papers belonging or pertaining to said Ohio Military Claim Agency or that you appear before the said court at Washington, Dist. of Col'a, on the first Tuesday of September, 1867, at 10 o'clock, of said day, to show cause why you have not so done; and have you then there this writ, your return thereon, of having done as you are hereby commanded.

[SEAL.] R. J. MEIGS, *Clerk.*

38 Acknowledged service.

JAMES C. WETMORE.

Mashal's return, Aug. 6th, 1867.

Served the within mandamus on James C. Wetmore, this 6th day Aug't., 1867.

D. S. GOODING,
Marshal D. C.

39 *Respondent's answer.*

STATE OF OHIO, ex rel., B. R. COWAN,
vs.
JAMES C. WETMORE. } Alternative mandamus.

To the honorable the Supreme Court of the District of Columbia:

James C. Wetmore, the respondent, saving and reserving to himself now, and at all times hereafter, all and all manner of benefit and advantage of exception which can or may be had or taken to the said writ in this case heretofore issued, makes answer and says:

That he was appointed military claim agent at Washington, D. C., under the several acts of the Ohio legislature of April 14th, 1863, March 24th, 1864. and April 6th, 1865, which position he held for the several terms of their appointments, until his resignation on June 30th, 1867, having, prior to the passage of any of said
40 statutes, viz: upon the 26th day of December, 1862, been appointed by the governor of Ohio to look after the interests of Ohio soldiers at Washington, D. C., and that while acting under their appointments he received such salary as was by the said statutes provided, as is recited in the said writ; and

He further says, that while so acting, he did not regard his acts as binding upon the State of Ohio; nor does he think that the governor of the State, with whom he corresponded in reference to the case of a person holding a similar position who had defaulted, regard the State of Ohio as liable for any malfeasance on his part, but that he regarded himself, and that he was generally by the public so regarded, as personally liable to any soldier or other person whose agent before the departments he had become, for the loss of any money or other valuables due or belonging to said person,

41 while in his, your respondent's, possession or charge, and that to protect himself in this regard, as well as to facilitate the transaction of his business, has made from time to time memoranda, or records of the names of those whose business he transacted with the departments, and the disposition made of their matters, which said "records" contain the only vouchers your respondent has to show, the disposition made by him of about two and one-half millions of dollars by him collected, as the agent before the departments of thousands of claimants, soldiers and others, of Ohio and other States, which, said records, he believes to be those demanded by the said Cowan, and referred to in the writ as "voluminous records," for he has no others; and

He further says, that these entries or records were not required, nor is it in the writ averred that they were required to be made by any law of the State of Ohio; nor were they nor any

42 records required by any law of the State of Ohio to be kept by any of the military claim agents provided for in the statutes of Ohio, recited in the writ; and

He further says, that having been kept at his own personal instance for his personal convenience and protection, while acting as military claim agent, these "records" he deems to be personal memoranda, and not official records, such as are attached and pertain to permanent offices, and are transmissible from one incumbent to his successor; and

He further says, that so regarding them, he did decline to transfer them to the said B. R. Cowan, and still declines so to do; and

He further says, that he has offered, and is still willing to allow copies of these, his personal memoranda of business done while military claim agent, to be made for the use of the Adjutant General's Office of the State of Ohio; and

43 He further says, that he has no "discharges of soldiers and marines," or copies thereof, "letters, affidavits, powers of attorney, accounts against the various departments of the Federal government," belonging either to the State of Ohio, or to the said Benjamin R. Cowan, and that such as he has, if any other than those regularly entrusted to him in the prosecution of his present business as a collecting agent, are, and always have been, subject to the order of their respective owners; and

He further says, that it is true, as stated in the writ, that his necessary office expenses were paid, as by the statutes cited in the writ was provided, while he was acting as military claim agent; and

He further says, that the furniture, and the balance of the stationery, etc., so provided, on hand at the time of his resignation, he has transferred to a person claiming authority from the State
44 of Ohio to receive it; and

He further says, that he did issue the circular attributed to him by the writ, and that he has received, and daily is receiving, favorable responses to it in large numbers from soldiers and others, who prefer paying him for the continued prosecution of their unsettled claims, to employing the Adjutant General of the State of Ohio gratuitously; and

He further says, that althongh he has made this full answer to the several charges and obligations of the writ, he denies that the said B. R. Cowan is authorized by any law of the State of Ohio to make the State a party to judicial proceedings without the limit of its own jurisdiction; and

He further says, that under the laws of Ohio, as cited in the writ, it does not appear that the said Cowan would be entitled to
45 the records, if any there were pertaining to the office of military claim agent at Washington; and

He further says, that any claim which the said Cowan, or the State of Ohio, might have to any of the records and papers referred to in the possession of your respondent, would come by virtue of the laws of the State of Ohio, which said laws are not in force in the District of Columbia, and in aid of which this court has no authority to issue a writ of mandamus.

Wherefore, your respondent prays the judgment of the court, whether he should deliver unto the said B. R. Cowan the "records, etc.," named in the writ, and that your respondent may be hence dismissed.

R. D. MUSSEY, *For Respondent.*

46 Proceedings before the Supreme Court of the District of Columbia, holding a special term for said district, commencing the first Tuesday, 5th day of July, 1867.

TUESDAY, *July* 5, 1867.

The court commences its term according to the rules, Chief Justice Cartter presiding, and adjourns till Saturday, the 27th of July, instant.

SATURDAY, *July 27th*, 1867.

The court resumes its session according to adjournment, Chief Justice Cartter, presiding. Court adjourn to 29th inst.

MONDAY, *July* 29, 1867.

The court resumes its session, according to adjournment, Chief Justice Cartter, presiding.

THE STATE OF OHIO, on the relation of Benjamin R. Cowen, petitioner.
vs.
JAMES C. WETMORE, respondent. } 4,034.—Law.

On reading and filing the relator's petition verified by his affidavit,

it is ordered by the court, that James C. Wetmore, late military claim agent of the State of Ohio, appear before this court, on
47 Thursday next, the first day of August, 1867, at ten o'clock a. m., to show cause why a mandamus should not be issued, commanding him to deliver to the said relator, Benjamin R. Cowen, all the books and papers pertaining and belonging to the Ohio military claim agency office, in the city of Washington, in the said petition particularly set forth and described.

THURSDAY, *August* 1, 1867.

The court resumes its session according to adjournment, Chief Justice Cartter, presiding.

THE STATE OF OHIO, in the relation of Benjamin R. Cowen, petitioner.
v.
JAMES C. WETMORE, respondent. } 4,034.—Law.

The respondent appearing in obedience to the rule aforesaid, by his attorney, Mr. Riddle, moves that the said rule be discharged, and on argument of said motion the court takes time to advise thereof.

And thereupon, the court adjourns till ten o'clock Tuesday
48 the 6th instant.

TUESDAY, *August* 6, 1867.

The court resumes its session according to adjournment, Chief Justice Cartter, presiding.

THE STATE OF OHIO, on the relation of Benjamin R. Cowen, petitioner.
vs.
JAMES C. WETMORE, respondent. } 4,034.—Law.

The rule heretofore, on the 29th ult. having been argued by counsel on both sides, on the petition in this case, and duly considered, it is thereupon, this 6th day of August, 1867, ordered that an alternative mandamus issue hereupon, returnable the first Tuesday of September, next.

An thereupon, the court adjourns without day.

Proceedings before the Supreme Court of the District of
49 Columbia, holding a special term for said district, commencing the first Tuesday 3d day of September, 1867.

THE STATE OF OHIO, on the relation of Benjamin R. Cowen, petitioner.
v.
JAMES C. WETMORE, respondent. } 4,034.—Law.

The alternative mandamus aforesaid having been issued and served upon the respondent, and the respondent having filed his answer thereto, and therein shown cause why he should not deliver to the

relator the books and papers belonging or pertaining to the Ohio military claim agency, in these proceedings mentioned; and the matter and things alleged on both sides having been heard upon argument of counsel, and fully understood, it is considered by the court, that the petitioner takes nothing by its suit, and that the respondent go thereof, without day, and recover against the relator his costs, by him about his defense expended, and that he have execution thereof.

And from this judgment the relator, on behalf of the petitioner, prays an appeal to the general term of this court, to be held on the third Monday of October next. And it is ordered that the relator execute with sufficient surety his bond that said appeal be
50 presented, in the penalty of two hundred dollars, payable to the respondent.

And thereupon the court adjourns without day.

Proceedings before the Supreme Court of the District of Columbia, in general term, commencing the third Monday 21st day of October, 1867.

MONDAY, *October* 21*st*, 1867.

Term commenced by proclamation by the marshal by order of the court. Present Cartter, Chief Justice, and Fisher and Wylie, Justices.

WEDNESDAY, *October* 30, 1867.

Session resumed pursuant to adjournment. Present Chief Justice Cartter and Justices Fisher and Wylie.

STATE OF OHIO
v.
JAMES C. WETMORE. } Law.—4,034.

Application for mandamus argued by Mr. Henkle for the State of Ohio, and Mr. Muzzey and Mr. Riddle for respondent.

And thereupon the court adjourns.

51 TUESDAY, *November* 5, 1867.

The court resumes its session according to adjournment; present Chief Justice Cartter, and Justices Fisher, Olin and Wylie.

THE STATE OF OHIO, at the relation of Benjamin R. Cowen, petitioner.
vs.
JAMES C. WETMORE, respondent. } At law.—4,034.

And now come here the parties aforesaid by their attorneys aforesaid, and, because it seems to the court that there is no error in the record and proceedings aforesaid, or in giving the judgment aforesaid, therefore, it is considered that the judgment aforesaid be in all things affirmed. And it is further considered that the relator pay the costs of the cause, to be taxed by the clerk.

52 DISTRICT OF COLUMBIA, *to wit*:

As commanded by the foregoing writ of error, I, Return J. Meigs, clerk of the Supreme Court of the District of Columbia, do hereby certify and transmit to the Supreme Court of the United States, a true copy of the record and proceedings mentioned in said writ of error, with all things touching the same, which copy is hereto annexed.

In testimony whereof, I have caused the seal of the said Supreme Court of the District of Columbia to be hereunto affixed, at the city of Washington, the 5th day of November, 1867.

[SEAL.] R. J. MEIGS, *Clerk*.

Supreme Court of the United States.

STATE OF OHIO, ex rel., BENJAMIN R. Cowan. *vs.* JAMES C. WETMORE. } In error.

54 Of December term in the year of our Lord one thousand eight hundred and sixty-seven.

Afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington comes the said State of Ohio, by Ford and Henkle, its attorneys, and says that, in the record and proceedings aforesaid, there is manifest error in this, to wit, that by the record aforesaid, it appears that the said Supreme Court of the District of Columbia, at special term found and adjudged that the respondent in his answer had shown cause why he should not deliver to the relator the books and papers belonging or pertaining to the Ohio military claim agency, in these proceedings mentioned, and adjudged that the petitioner should take nothing by its suit,

55 and that the respondent should recover his costs against the relator, and the said Supreme Court of the District of Columbia, at general term, found and adjudged that there was no error in the records or proceedings aforesaid, or in the giving of the judgment aforesaid, and thereupon in all things affirmed the said decision of the said court at special term; whereas, by the laws of the land judgment should have been given for said plaintiff, and against the said respondent; and the plaintiff prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of said judgment &c.

FORD & HENKLE,
Atty's for Plff's.

relator the books and papers belonging or pertaining to the Ohio military claim agency, in these proceedings mentioned; and the matter and things alleged on both sides having been heard upon argument of counsel, and fully understood, it is considered by the court, that the petitioner takes nothing by its suit, and that the respondent go thereof, without day, and recover against the relator his costs, by him about his defense expended, and that he have execution thereof.

And from this judgment the relator, on behalf of the petitioner, prays an appeal to the general term of this court, to be held on the third Monday of October next. And it is ordered that the relator execute with sufficient surety his bond that said appeal be
50 presented, in the penalty of two hundred dollars, payable to the respondent.

And thereupon the court adjourns without day.

Proceedings before the Supreme Court of the District of Columbia, in general term, commencing the third Monday 21st day of October, 1867.

MONDAY, *October 21st*, 1867.

Term commenced by proclamation by the marshal by order of the court. Present Cartter, Chief Justice, and Fisher and Wylie, Justices.

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Session resumed pursuant to adjournment. Present Chief Justice Cartter and Justices Fisher and Wylie.

STATE OF OHIO
v.
JAMES C. WETMORE. } Law.—4,034.

Application for mandamus argued by Mr. Henkle for the State of Ohio, and Mr. Muzzey and Mr. Riddle for respondent.

And thereupon the court adjourns.

51 TUESDAY, *November* 5, 1867.

The court resumes its session according to adjournment; present Chief Justice Cartter, and Justices Fisher, Olin and Wylie.

THE STATE OF OHIO, at the relation of Benjamin R. Cowen, petitioner.
vs.
JAMES C. WETMORE, respondent. } At law.—4,034.

And now come here the parties aforesaid by their attorneys aforesaid, and, because it seems to the court that there is no error in the record and proceedings aforesaid, or in giving the judgment aforesaid, therefore, it is considered that the judgment aforesaid be in all things affirmed. And it is further considered that the relator pay the costs of the cause, to be taxed by the clerk.

52 DISTRICT OF COLUMBIA, *to wit*:

As commanded by the foregoing writ of error, I, Return J. Meigs, clerk of the Supreme Court of the District of Columbia, do hereby certify and transmit to the Supreme Court of the United States, a true copy of the record and proceedings mentioned in said writ of error, with all things touching the same, which copy is hereto annexed.

In testimony whereof, I have caused the seal of the said Supreme Court of the District of Columbia to be hereunto affixed, at the city of Washington, the 5th day of November, 1867.

[SEAL.] R. J. MEIGS, *Clerk.*

Supreme Court of the United States.

STATE OF OHIO, ex rel., BENJAMIN R. COWAN.
vs.
JAMES C. WETMORE.
} In error.

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Afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington comes the said State of Ohio, by Ford and Henkle, its attorneys, and says that, in the record and proceedings aforesaid, there is manifest error in this, to wit, that by the record aforesaid, it appears that the said Supreme Court of the District of Columbia, at special term found and adjudged that the respondent in his answer had shown cause why he should not deliver to the relator the books and papers belonging or pertaining to the Ohio military claim agency, in these proceedings mentioned, and adjudged that the petitioner should take nothing by its suit,
55 and that the respondent should recover his costs against the relator, and the said Supreme Court of the District of Columbia, at general term, found and adjudged that there was no error in the records or proceedings aforesaid, or in the giving of the judgment aforesaid, and thereupon in all things affirmed the said decision of the said court at special term; whereas, by the laws of the land judgment should have been given for said plaintiff, and against the said respondent; and the plaintiff prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of said judgment &c.

FORD & HENKLE,
Atty's for Plff's.

Supreme Court of the United States.

DECEMBER TERM, 1868.

STATE OF OHIO *ex rel.* B. R. COWAN, PL'FF IN ERROR,

vs.

J. C. WETMORE, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

A. G. RIDDLE,
R. D. MUSSEY,
Counsel for Defendant in Error.

JUDD & DETWEILER, Printers, corner Penn. avenue and 11th street.

IN THE

Supreme Court of the United States.

DECEMBER TERM, 1868.

STATE OF OHIO *ex rel.* B. R. COWAN, PL'FF IN ERROR,

vs.

J. C. WETMORE, DEFENDANT IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

ON THE MOTION TO DISMISS.

The defendant in error contends that the absence of jurisdictional value in the articles sought to be recovered under this writ, is ground for dismissal of this case.

The first section of the act of April 2, 1816, (3 Stat. 261,) provides that no cause shall be removed from the Circuit Court of the United States for the District of Columbia to this Court by writ of error or appeal, "unless the matter in dispute in such "cause shall be of the value of one thousand dollars or upwards, "exclusive of costs."

The second section of the same act provides, that such appeal or writ of error may be directed to be allowed or issued by one of the Justices of this Court, on due petition by the person desiring it, where the amount involved is one hundred dollars or over, exclusive of costs, and less than one thousand dollars, if the Justice to whom the petition is addressed shall think it desirable

to have the decision of the Supreme Court on the questions of law involved.

The act of March 3, 1863, organizing the present Supreme Court of the District of Columbia, (12 Stat. 762,) continued in force this limitation of appeals.

This writ of error was not directed by one of the Justices of this Court, to be issued under the authority conferred in the second section of the act of 1816, referred to.

The record of the proceedings below bears no trace of jurisdictional value. No value whatever is set upon the articles sought to be recovered.

ON THE MERITS.

Should the Court overrule the motion to dismiss and go to the merits of the case, the defendant in error contends:

I. That the State of Ohio is not properly made a party in this case; that the relator has no power to institute a suit in the name of the State of Ohio.

Vattel, book 1, chap. 9, § 40.
Pennsylvania *vs.* Wheeling and Belmont Bridge Company, 13 How., 518, 560.
Grayson *vs.* Virginia, 3 Dall., 320.
Huger *vs.* South Carolina, 3 Dall., 339.
Chisholm *vs.* Georgia, 2 Dall., 419.
Commonwealth of Kentucky *vs.* Dennison, Governor, &c., 24 How., 66.

II. That under the laws of Ohio cited in the alternative writ of mandamus issued to him, it does not appear that the relator Cowan would be entitled to the records, if any there were, pertaining to the office of "Military Claim Agent," at Washington, D. C.

III. That any claim which the relator or the State of Ohio might have to any of the records and papers referred to in his

possession, would arise by virtue of the laws of the State of Ohio, which laws are not of force in the District of Columbia, and in aid of which the Supreme Court of the District of Columbia has no authority to issue a writ of mandamus.

Walker's American Law, p. 76.
Story's Conflict of Laws, pp. 39, 42, 906.
Blanchard *vs.* Russell, 13 Mass., 1, 4.
Fœlix Droit Internat. Priv., § 3, quoted in Wheaton's Internat. Law, Part II., Chap. 2, § 2.
McCluna *vs.* Silliman, 2 Whea., 369.
McClung *vs.* Silliman, 6 Wheat., 598.

IV. That mandamus is not the proper remedy for the relator if entitled to the records, books, papers, &c., sought to be recovered.

Rex *vs.* Barker *et al.*, Burr., pp. 1265, 7, 8, 9.
Rex *vs.* Askew *et al.*, Burr., pp. 2186, 8.
McMorris *vs.* Simpson, 21 Wend., 610.
Smith *et al. vs.* Erb *et al.*, 4 Gill, 437.
First Parish in Sudbury *vs.* Stearns, 21 Pick., 148, 151.

V. That insufficient grounds for a mandamus appeared on the alternative writ, and that, therefore, the peremptory writ could not be issued.

Queen *vs.* Hopkins *et al.*, 1 A. & E. n. s., 161.

VI. That the records, books, and papers referred to, are records and memoranda of the private business of private individuals, whose agent the defendant in error was, and are his private property, and not being the records, books, and papers of a public office, are not subject to the process prayed for.

Bacon's Abridgement, *sub. verbo.* "Officer."
Dane's Abridgement, chap. 81, art. 2, § 1.

Bouvier's Law Dictionary, *sub. verbo.* "Officer," and *sub. verbo.* "Records."
Story on Agency, § 3.
Paley on Agency, 1.
Carthew, 478.
Moore *vs.* Kline, 1 Penn., 129.
State *vs* Kennon, 7 O. S., 546.

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